

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES
AND CANADA, LOCAL 720, AFL-CIO, CLC
(Global Experience Specialists)

and

Case 28-CB-107693

STEVEN LUCAS, an Individual

and

Case 28-CB-113281

JAMY RICHARDSON, an Individual

Andrew S. Gollin, Esq., for the General Counsel.
William A. Sokol and Kristina L. Hillman, Esqs.
(Weinberg, Roger & Rosenfeld),
for the Respondent.

DECISION

STATEMENT OF THE CASE

LISA D. THOMPSON, Administrative Law Judge. This consolidated case was tried in Las Vegas, Nevada, on January 21 and 22, 2014. Steven Lucas (the “Charging Party” or “Lucas”) filed a charge against Respondent, the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists, and Allied Crafts of the United States, et al. (the “Respondent” or “IATSE”) on June 21, 2013. The Regional Director for Region 28 of the National Labor Relations Board (the “NLRB” or the “Board”) issued the complaint and notice of hearing on August 30, 2013 (Case 28-CB-107693).

Jamy Richardson (the “Charging Party” or “Richardson”) also filed a charge and an amended charge against Respondent (Case 28-CB-113281) on September 13, 2013, and November 26, 2013, respectively. On November 27, 2013, the Regional Director issued the complaint on Richardson’s charge, consolidated both Lucas’ and Richardson’s cases, and issued

a notice of hearing. The consolidated complaint was amended on December 5, 2013, and again on January 21, 2014, the day of the hearing.¹

The complaint alleges that Respondent violated Section 8(b)(1)(A) and (b)(2) of the National Labor Relations Act (the “NLRA” or the “Act”) when it refused to allow Lucas to review hiring hall/dispatch records to determine if the hall was being operated in a discriminatory manner. The complaint also alleges that Respondent violated Section 8(b)(1)(A) and (b)(2) of the Act when it refused to refer Richardson for employment until he paid fines levied against him by Respondent. Respondent filed its answer, denying *all* facts and allegations, including *inter alia* all jurisdictional allegations, the Board’s jurisdiction, its status as a labor organization, the names and job titles of its officers and agents, and that it served as an exclusive hiring hall and referral source for employees who perform stagehand work in Las Vegas. Respondent also set forth its affirmative defenses to the complaint.

MOTION TO STRIKE

Before delving into the merits of this case, I must rule on an outstanding motion raised by counsel for the General Counsel (CGC) during the hearing. Prior to the hearing, on December 24, 2013, I granted in part and denied in part Respondent’s Petition to Revoke.² In so doing, I ordered Respondent to produce 18 categories of documents at the hearing which were responsive to the General Counsel’s subpoena duces tecum B-713350.³ Those documents included, but were not limited to: information concerning the names and job titles of Respondent’s officers and agents, documents relating to any contracts or agreements between Respondent and Encore Productions, Inc. (“Encore”),⁴ documents related to the collective-bargaining agreement, including the employees’ terms and conditions of employment with Encore and whether and to what extent Respondent was the exclusive source of employee referrals for Encore, written materials, correspondence, and/or documents concerning the employee referral system, as well as its rules and regulations therein.

At the hearing, Respondent again objected to the production of the subpoenaed documents for the reasons previously denied in its Petition to Revoke. I again overruled Respondent’s objection on those grounds. However, Respondent further objected to the production of the subpoenaed documents essentially, from what I gathered, in protest to Region 28’s and the San Francisco Division of Judges’ denial of Respondent’s request for continuance and its order requiring Mr. Sokol (versus co-counsel Kristina Hillman) to appear at the hearing.⁵

¹ GC Exh. 2. Abbreviations used in this decision are as follows: “Tr.” for transcript; “GC Exh.” for General Counsel’s exhibit; “GC Br.” for the General Counsel’s brief; “R. Exh.” for Respondent’s exhibit; and “R. Br.” for Respondent’s brief.

² GC Exh. 3a.

³ GC Exhs. 2, 3c.

⁴ The General Counsel’s subpoena duces tecum B-713350 originally listed Encore Productions, Inc. as the signatory employer in this case. However, Respondent denied all allegations regarding Encore, including that Encore is an employer within the meaning of the Act and that Encore served as one of the signatory employers for whom IATSE Local 720 referred employees. More importantly, Respondent refused to produce any of the subpoenaed documents concerning its relationship with Encore. In light of this, I granted the CGC’s motion to amend the consolidated complaint to change the employer from Encore Productions, Inc. to Global Experience Specialists. See Sec. 102.17 of the Board’s Rules and Regulations.

⁵ Tr. 6-11, 35-37.

Respondent also failed to produce subpoenaed witnesses John Hanson, Jeff Foran, and Daniel Cook for the General Counsel’s case on grounds that the witness subpoenas were not properly served on the above-named individuals.⁶ Nevertheless, Respondent, through counsel, advised it did not intend to comply with either subpoena absent a court order. The CGC objected to Respondent’s failure to produce the subpoenaed documents and the failure to make the subpoenaed witnesses available for trial. I held these issues in abeyance pending the completion of the General Counsel’s case-in-chief.

At the conclusion of the General Counsel’s case, the CGC decided against enforcement of the subpoenas and rested his case. At that point, Respondent sought to introduce various documents, marked Union Exhibits 1-10, during its case-in-chief. However, those documents were responsive to the General Counsel’s subpoena duces tecum B-713350 which were not produced to the CGC during his case-in-chief. Additionally, Respondent called John Hanson as a witness but failed to produce him for the CGC’s case.

As such, the CGC objected and moved to strike the admission of all of Respondent’s exhibits as well as the testimony of John Hanson due to Respondent’s deliberate refusal to comply with the General Counsel’s subpoenas and my Order granting in part and denying in part Respondent’s Petition to Revoke. I reserved ruling on the CGC’s motion, pending receipt of the parties’ post-hearing briefs.

Section 102.113(c) of the Rules and Regulations of the Board provide that “subpoenas shall be served upon the recipient either personally, by registered or certified mail, by telegraph, or by leaving a copy . . . at the principal office or place of business of the person required to be served.” See also *Offshore Mariners United*, 338 NLRB 745 (2002). Subpoenas served by regular United States Mail also constitute effective service. Section 102.113(d) of the Board’s Rules, see also *Best Western City View Motor Inn*, 327 NLRB 468, 468-469 (1999). More importantly, a party need not serve the subpoena on the person specifically authorized to accept service in order to prove effective service. *Control Services*, 303 NLRB 481, 483 fn. 13 (1991), *enfd. mem.* 961 F.2d 1568 (3d Cir. 1992) (leaving a copy of the subpoena with the receptionist at the respondent’s principal place of business was effective service on the respondent’s officer under Section 102.113(c), even if respondent had not authorized the receptionist to accept service).

Once service is effectuated, a party has an “obligation to begin a good faith effort” to gather and produce the responsive documents. A party who ignores a subpoena pending a ruling on a petition to revoke does so at his/her own peril. *McAllister Towing & Transportation Co.*, 341 NLRB 394, 396-397 (2004), *enfd.* 156 Fed. Appx. 386 (2d Cir. 2005) (upholding judge’s imposition of evidentiary sanctions against respondent for failing to substantially comply with the subpoenas upon issuance of the judge’s order partially denying its petition to revoke on the first day of hearing) (emphasis added). Similarly, the judge can impose sanctions where a party fails and/or refuses to timely or properly comply with a subpoena. See *McAllister Towing*, *supra*.

⁶ GC Exhs. 4-6; *see also* Tr. 44-55.

In determining whether sanctions are appropriate, the judge must consider the following factors: (1) the initial scope and specificity of the subpoena(s) directions; (2) the volume of the records addressed, and those produced; (3) the nature of the call, or request for production, and the nature and type of prior responses; (4) other factors of record indicative of the opponent's actual intended compliance with subpoena direction, including whether there has been voluntary prehearing and hearing response, or response to a subsequent ruling on dispute thereon; (5) the status of the record showing a claim made of prior conduct of a reasonable and diligent search; (6) the nature of the explanations offered for any late production; (7) the point in the hearing at which the records were produced; and (8) any other factors reasonably tending to establish that there was good faith in adherence to the Board's subpoena process. See *People's Transportation Service*, 276 NLRB 169, 225 (1985).

After considering all of the evidence, including the parties' arguments in their post-hearing briefs, I find that sanctions are appropriate against Respondent for refusing to comply with the General Counsel's subpoena duces tecum B-713350, my Order regarding its Petition to Revoke, and for refusing to produce witness John Hanson (and other witnesses) during the CGC's case-in-chief. Respondent's arguments for its noncompliance are meritless.

First, I find that the subpoenas in question were properly served on Respondent pursuant to the Board's Rules.⁷ Second, the record clearly reveals that the General Counsel's subpoenas were clear and unambiguous regarding the documents requested and the witnesses to be produced. While Respondent argued that production of the subpoenaed documents were overbroad and unduly burdensome, I previously overruled that argument and, except for three categories of documents, ordered production of the documents at the hearing. Rather, Respondent, through counsel, willfully refused to produce any of the subpoenaed documents despite my ruling and failed to make any of the subpoenaed witnesses available for the CGC's case.

I further find that Respondent, by virtue of its Exhibits 1-10, actually located documents responsive to the subpoena but simply refused to produce them to the CGC. Moreover, Respondent was fully aware that the CGC properly subpoenaed witness John Hanson (among others) to testify during the CGC's case-in-chief, but only made Hanson available for its case-in-chief. Lastly, but for Respondent's Exhibits 1-10, none of the documents subpoenaed were produced at the hearing, and I find Respondent's rationale for its conduct; i.e., that it sought a continuance of the hearing so that the attorney originally assigned to the case could try the case, unpersuasive, at best, and more likely, obstructionist and a wanton disregard of the orders and authority of the Board. Accordingly, the CGC's motion to strike is **GRANTED**.

Because I find that Respondent deliberately refused to comply with the General Counsel's subpoenas and my prior Order, I will:

(1) Strike from admission into the record and give no weight to Respondent's Exhibits 1-10 proffered during the hearing, see *Equipment Trucking Co.*, 336 NLRB 277, 277 fn. 1 (2001).

⁷ GC Exhs. 4-6.

(2) Strike from admission into the record and give no weight to the testimony of John Hanson who testified on behalf of Respondent, *Id.*

(3) Permit the CGC to use secondary evidence to prove any element of his case-in-chief.

Therefore, based upon the record primarily made by the CGC, including my observations of the demeanor of CGC's witnesses, and after considering the briefs filed by the CGC and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Global Experience Specialist (GES) is an Arizona corporation, with an office and place of business in Las Vegas, Nevada.⁸ GES is an event company engaged in the business of assembly at trade shows and conventions in Las Vegas and across the United States.⁹ During a 12-month period ending in December 2013, GES derived gross revenue in excess of \$100 million.¹⁰ At its Las Vegas location, in 2013, GES purchased and received goods and services valued in excess of \$1,000,000 from points outside the State of Nevada.¹¹ Accordingly, at all times material, I find that GES is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Although Respondent denied that it is or functions as a union, I find that, at all times material, Respondent was a labor organization within the meaning of Section 2(5) of the Act. Similarly, despite that Respondent refused to identify the names and job titles of its officers, I find the following individuals held the positions set forth opposite their names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

| | |
|-------------------|---------------------------------------|
| Dan'l Cook (Cook) | President |
| Ron Poveromo | Secretary Treasurer |
| John Hanson | Business Representative ¹² |

⁸ Tr. 61-62.

⁹ *Id.*

¹⁰ Tr. 63-64.

¹¹ Tr. 67-68.

¹² GC Exhs. 7, 10-12. Jeff Forman (Forman) replaced John Hanson as Respondent's business representative in January 2014. Respondent objected to the admission of GC Exhs. 11 and 12 on the grounds that the website, www.iatselocal720.com, could not be properly authenticated as the official website of IATSE Local 720. However, I overrule Respondent's objection, on the ground that, since Respondent deliberately refused to produce subpoenaed documents to determine its status, I will allow the CGC to admit GC Exhs. 11 and 12 as secondary evidence to prove that IATSE Local 720 is, in fact, a labor organization. Alternatively, I take judicial notice that www.iatselocal720.com is a public website containing the information documented in GC Exhs. 11 and 12.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Hiring Hall

Respondent operates an exclusive referral service that provides signatory employers with skilled labor to perform stagehand work at conventions and trade shows in the Las Vegas area. Respondent has collective-bargaining agreements (“CBA”) with several signatory employers, including GES, wherein employers are contractually obligated to utilize Respondent as its exclusive source of employee referrals before the employer can hire employees from another source.¹³ These CBAs also govern the terms and conditions of employment for employees referred out for stagehand work. Respondent has also been the exclusive collective-bargaining representative for employees working for GES and other employers within the meaning of Section 9(a) of the Act.¹⁴

While the specifics of each employer’s referral procedures with Respondent differs slightly, generally speaking, Respondent’s referral process begins when the signatory employer, like GES, initiates a call request to Respondent to request employee referrals.¹⁵ For each project, the employer will complete and submit a requisition sheet, specifying the location, date, and times of the project, as well as the number of positions that need to be filled.¹⁶ The employer may request employees by name for certain positions or have an open call, where Respondent (versus the employer) determines the best qualified employees for the particular project.¹⁷ Employers also may request that Respondent refrain from referring certain member users to their jobsites.¹⁸

Once Respondent receives a referral request, it must ensure that it expeditiously refers qualified employees to fulfill the employer’s call request. Prior to 2012, much of the referrals were handled by telephone calls between the employee users and Respondent’s dispatchers. For example, prior to 2012, when an employee user was referred work, the employee called the dispatcher directly to accept or decline work. Also, employee users and the employer often telephoned one another directly regarding the specifics of a project, including arrival locations and time changes.

However, in 2012, Respondent implemented a new computerized dispatch system. Namely, after receiving call requests from employers, like GES, Respondent’s dispatchers would input the request into an automated or computerized system.¹⁹ Thereafter, the automated system contacts the individual employee to determine if they are available for the project.²⁰ Employee

¹³ GES is a party to a collective-bargaining agreement requiring that Respondent be the exclusive source for its employment referrals. See GC Exh. 7

¹⁴ Tr. 78-79.

¹⁵ Tr. 80-81.

¹⁶ GC Exh. 8.

¹⁷ Tr. 81-83; 88-90, 108; see also GC Exhs. 7-9.

¹⁸ Tr. 109.

¹⁹ Tr. 173-175.

²⁰ GC Exhs. 14-15.

users of the new system were required to register to utilize the automated system and were given codes and passwords that identified them and allowed them to access and respond to the automated dispatch system. Also, instead of telephoning the employee user directly, under the new system, the employer spoke directly with Respondent’s dispatchers to convey any changes to the project, the dispatchers input the changes into the automated system, and the automated system would contact the employee user. The effect of the new system essentially eliminated much of the direct telephone contact between the employee users, Respondent’s dispatchers and the signatory employer.

B. The Lucas Allegations

1. Facts

Charging Party Lucas is a registered user of Respondent’s referral service. He has used Respondent’s service for over 30 years. Over the years, Lucas has filed multiple unfair labor practice (ULP) charges against Respondent challenging almost every aspect of how Respondent operates its referral service.²¹ The litigation has spanned over several years and resulted in substantial acrimony and mistrust between Respondent and Lucas. This mistrust is important to note, because it forms the backdrop for Respondent’s defense to Lucas’ complaint. Nevertheless, the acrimony between Lucas and counsel for Respondent was palpable at the hearing.²²

In any event, turning to the facts of this case, in early spring of 2013, Lucas began having concerns over several dispatch errors that he believed cost him work. Specifically, on February 26, 2013, Lucas was referred for work as a tape operator at Caesars Palace (the “Tape operator job”). Toward the end of his shift, Lucas was asked by Caesars to return the next day, February 27, to continue the job. Lucas agreed to the call back, but he was already scheduled to be sent on a head audio job (the “A1 job”) at Caesars on February 27.²³

Sometime during the evening of February 26, Lucas called Respondent’s dispatcher, Jennifer Schaffer (“Schaffer”) about the schedule change. However, instead of informing Schaffer that he was being recalled for the tape operator job on February 27, Lucas simply told Schaffer to cancel the A1 referral.²⁴ For his part, Lucas admitted that he did not explain to Schaffer why he canceled the A1 job but indicated that, according to Respondent’s work rules, he was not required to do so. While Lucas is *technically* correct that Respondent’s work rules provide that, when a registered user is called for a job, the user is only *required* to accept or decline availability, I find Lucas’ reliance on this technicality disingenuous, because nothing in Respondent’s work rules *prohibited* him from disclosing or explaining his unavailability either.

²¹ See *Stage Employees IATSE Local 720 (AVW Audio Visual)*, 332 NLRB 1 (2000), revd. by *Lucas v. NLRB*, 333 F.3d 927 (9th Cir. 2003); see also *Stage Employees IATSE Local 720 (AVW Audio Visuals, Inc.)*, 341 NLRB 1267 (2004); and *Stage Employees IATSE Local 720 (AVW Audio Visuals, Inc.)*, 352 NLRB 29 (2008) (parties litigated over appropriate remedy); and *Stage Employees IATSE Local 720 (Production Support Services)*, 352 NLRB 1081 (2008).

²² Lucas’ responses during cross-examination were oftentimes vague and unresponsive. Lucas initially leaned back in his chair with a stiffened countenance and body stance, but in answering Respondent counsel’s questions, would lean forward and cut off counsel to make his point before counsel completed his question. However, Respondent’s counsel’s tone in questioning Lucas was intended to provoke him to anger.

²³ Tr. 212-213.

²⁴ Tr. 213-214.

Rather, I find, as set forth below, that Lucas was intentionally evasive with his availability and that evasiveness contributed to the confusion as to his availability the next day.

Despite informing Schaffer that he was unavailable for work on February 27, Respondent's automated system continued to call Lucas with referrals. Lucas again called Schaffer to complain about the repeated automated calls and told her to sign him out from receiving referrals for 24 to 48 hours.²⁵

Still later that same evening, Carmen Gomez ("Gomez"), a Caesars Palace labor coordinator, called Respondent and told Schaffer to have Lucas report to Caesars at 8 a.m. versus 7 a.m. on February 27.²⁶ Gomez was referring to the Tape operator job which Lucas was recalled. However, since Schaffer was unaware that Lucas had been recalled for the tape operator job, she mistakenly thought that Gomez was calling about the A1 job which Lucas declined. As such, Schaffer told Gomez that Lucas was unavailable for work on February 27, and Gomez found another employee to perform the work. When Lucas arrived on February 27 to continue the Tape operator job, he was told he was no longer needed.²⁷ Lucas was also concerned about similar dispatching errors that occurred on February 28 and March 10, 2013.²⁸

As a result of these incidents, on March 11, 2013, Lucas emailed Respondent's Business Representative, Hanson, Treasurer Poveromo, and President Cook concerning the botched dispatches.²⁹ Lucas demanded \$1500 for his lost wages resulting from the botched referrals and threatened to file a lawsuit in Clark County, Nevada's small claims court if he and Respondent could not resolve the matter. Cook did not take kindly to the litigation threat but agreed to look into the matter.³⁰

At the hearing, Lucas explained his concerns about the botched dispatches, but he was vague and evasive in his answers on cross-examination concerning why he failed to disclose his unavailability to Schaffer. While Lucas testified that he refused to disclose to Respondent his unavailability for referrals because he thought he would be accused of violating Respondent's work rules against job jumping,³¹ there was no evidence presented that Lucas had ever been accused of job jumping. Rather, I credit the portion of Lucas' testimony on cross-examination where he acknowledged that part of the confusion with his dispatches, and particularly, the Caesars' referral, stemmed from his unfamiliarity with Respondent's new automated system, but more so, his unwillingness to disclose information to Respondent regarding his availability.

In any event, on or around March 22, 2013, Lucas arrived at Respondent's offices to pick up his paycheck. He spoke with Hanson and Cook about the botched dispatches and gave further

²⁵ Tr. 229.

²⁶ Tr. 216-217.

²⁷ GC Exh. 16, see also Tr. 218-222. While Business Representative Hanson testified regarding Respondent's version of the Caesars Palace mix-up, his testimony will not be considered based upon my previously imposed sanction against Respondent.

²⁸ GC Exh. 16.

²⁹ Id.

³⁰ GC Exh. 17.

³¹ Tr. 223.

details about the Caesars Palace mix-up.³² According to Lucas, Hanson acknowledged that the dispatchers did not know the difference between an A1 and Tape operator job, something Lucas believed the dispatchers should have been able to differentiate.³³ In any case, Hanson told Lucas that Lucas could file a claim with Respondent for the botched referrals, and if Respondent found merit to the claim, it would pay him \$100 for any losses resulting from the botched dispatch.³⁴ Lucas' account of the conversation stands uncontroverted.³⁵

Later that same day, Lucas emailed Hanson and Cook, stating that he considered \$100 insufficient to reimburse him for his lost wages. However, in order to get to the bottom of the botched dispatches, Lucas requested access to Respondent's dispatch records so he could clarify how the dispatching referrals were handled. Lucas told Hanson and Cook that he would pursue a ULP charge with the Board if he did not receive the requested information.³⁶

In response to Lucas' email, on March 27, 2013, Hanson emailed Lucas and attached Lucas' "current years dispatch record," which included his referrals for a 3-month period from January through March 2013.³⁷ Lucas testified that he believed the information provided was unresponsive to his request because it only contained information on *his* referrals; and as such, he was unable to determine how the mix-up in the dispatches occurred. Because of this, Lucas grew suspicious that Respondent was not only withholding information but was unfairly referring him out for work.³⁸ Thereafter, Lucas filed a lawsuit in small claims court and, on April 29, 2013, filed a ULP charge against Respondent (Case 28-CB-103922).³⁹ On May 21, 2013, Lucas withdrew the ULP charge.⁴⁰

Despite withdrawing the ULP charge, Lucas remained suspicious that Respondent was "hiding something" from him concerning the botched dispatches. Specifically, Lucas testified:

JUDGE THOMPSON: Did you have reason to believe—and I think this is what Mr. Gollin just asked—that there were other anomalies in your dispatching?

THE WITNESS: Yes, they weren't giving me any information. So I had reason to believe, in the past, dispatch had been operated—they fired a dispatcher for the hiring hall being operated in an unfair and discriminatory manner. And they would not respond to me with the information I wanted. So I was suspicious that there's thing[s] that were being kept from members or non-members or registrants. So that's what led me to request information so I could determine if the hiring hall was being operated in a fair and nondiscriminatory manner.⁴¹

³² Tr. 185-186.

³³ Id.

³⁴ Tr. 184-186.

³⁵ I will not consider Hanson's testimony regarding this discussion due to the previously imposed sanction against Respondent. See *supra* at 4-5.

³⁶ GC Exh. 18.

³⁷ GC Exh. 19.

³⁸ Tr. 188-192.

³⁹ GC Exh. 20.

⁴⁰ GC Exh. 21.

⁴¹ Tr. 195-196.

Therefore, on June 4, 2013, Lucas emailed a second, more specific information request to Cook, Hanson, and Poveromo. This request stated:

5 Dear John Hanson, Business Representative IATSE Local 720 Stagehands, Danl' Cook, President IATSE Local 720 Stagehands, Ronald Poveromo, Secretary Treasurer IATSE Local 720 Stagehands,

10 I wish to review all dispatch records to insure the IATSE 720 Stagehands hiring hall is operated in a non discriminatory fashion. I am also requesting the current rules and procedures to be eligible for dispatch through IATSE Local 720 Stagehands hiring hall.

15 To emphasize, I respectfully request to review all dispatch records, for all jobs Local 720 stagehands has dispatched any referent, to any employer signatory to a contract with 720 Stagehands.

20 Myself and other referents are seeking the IATSE Local 720 Stagehands dispatch records of all referents, and all jobs, to all employers signatory to a collective bargaining agreement with Local 720 Stagehands from May 2012 to April 30, 2013.

25 Additionally, Steven Lucas and other referents are requesting dispatch records of all referents, and all jobs, to all employers signatory to a collective bargaining agreement with Local 720 Stagehands from December 4, 2012 to June 4, 2013.

30 Provide the requested dispatch information within 14 days of this writing otherwise I have no alternative than to file an Unfair Labor Practice with the National Labor Relations Board.

Very truly yours,

35 Steven Lucas
Referent #101632⁴²

40 It is undisputed that Respondent received Lucas' June 4 letter but did not respond to it.⁴³ It is also undisputed that Respondent never contacted Lucas regarding the request, never told him that it had concerns about responding to the request, and never provided him with any of the requested information.

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⁴² GC Exh. 22.

⁴³ Tr. 402-405.

2. Analysis

5 Counsel for the General Counsel alleges that Respondent violated Section 8(b)(1)(A) and (b)(2) of the Act when it refused to give Lucas access to over 1 year’s worth of Respondent’s job referral records showing the names of all member user’s that were referred jobs and the names of the employers to whom they were referred between May 2012 and June 2013.

10 Under Section 8(b)(1)(A) of the Act, a union, acting as an exclusive hiring hall, owes its member users a duty of fair representation by operating that hall in a fair and nondiscriminatory manner. *Radio Electronics Officers Union*, 306 NLRB 43 fn. 2 (1992). Concomitant with that duty, the union is also required to provide users with information sufficient so they can intelligently challenge the hiring hall structure and determine whether it operates fairly. *Id.*
 15 Therefore, the union violates the Act when it arbitrarily denies a request for job referral information if the request is reasonably directed toward ascertaining whether the user has been treated fairly. However, the union can avoid liability if it can show that its refusal to provide the requested information is necessary to vindicate legitimate union interests.⁴⁴

20 In this case, Respondent advances several arguments in denying liability. First, Respondent avers that it is not a hiring hall. This argument is completely without merit.

In *Carpenters Local 102 (Millwright Employees Assn.)*, 317 NLRB 1099 (1995), the Board adopted specific elements to establish whether a labor organization is an exclusive hiring hall. First, Respondent must be a “labor organization,” and, second, its actions must have affected “employees.” Regarding the first element, despite Respondent’s denials, I have already determined that Respondent is and has always been a “labor organization” within the meaning of Section 2(5) of the Act. My conclusion is based upon record evidence; and specifically, that under Section 2(5): (a) Respondent is an organization in which employees participate; (b) it exists inter alia for the purpose of dealing with grievances, labor disputes, rates of pay, and/or other terms and conditions of work of persons performing stagehand work within the Las Vegas area and the surrounding counties; and (c) it admits that it is the “sole and exclusive collective bargaining representative of all employees in the bargaining unit,” under Article 3 of Respondent’s CBA with GES.⁴⁵ In addition, prior Board decisions have concluded that
 35 Respondent is a labor organization.

For the second element, Respondent’s actions have “affected employees” as Lucas fell into the general class of jobseekers using Respondent’s hiring hall, so he was an “employee” for purposes of Section 8(b)(1)(A).⁴⁶

⁴⁴ *Carpenters Local 608 (Various Employers)*, 279 NLRB 747 (1986), enf’d. 811 F.2d 149 (2d Cir. 1987), cert denied 484 U.S. 817 (1987); *Carpenters Local 35 (Construction Employees Assn.)*, 317 NLRB 18 (1995) (Board found respondent union violated Act by refusing to disclose and make copies of requested hiring hall records showing job referrals for all users during 6-month period); see also *Boilermakers Local 197 (Northeastern State Boilermaker Employers)*, 318 NLRB 205 (1995), citing *Carpenters Local 35*, supra; and *NLRB v. Operating Engineers Local 139*, 796 F.2d 985, 992-994 (7th Cir. 1986).

⁴⁵ GC Exh. 7.

⁴⁶ See *Houston Chapter, AGC*, 143 NLRB 409, 412 (1963).

Now, when a union is alleged to have violated Section 8(b)(1)(A) by failing to fulfill its duty of fair representation in connection with operating a hiring hall, a third element must be established. That is, the union's hiring hall is an 'exclusive' one; "for absent that showing, the duty of fair representation does not attach."⁴⁷ A union's hiring hall is "exclusive" if it is an employer's initial or primary source for employees.⁴⁸

In this case, this element is also met as Respondent's agreement with GES specifically provides that Respondent serves as GES' sole and exclusive source of referrals of employees for GES' stagehand work.⁴⁹ Moreover, I credit Noel Cummins', GES' rigging department's senior operations manager, uncontroverted testimony that Respondent and GES have, in practice, an exclusive referral arrangement.⁵⁰ Finally, and most importantly, the Board has repeatedly found Respondent to be an exclusive hiring hall so it is unclear to me why Respondent chose to argue this point in the first place.⁵¹ Nevertheless, I find that Respondent is clearly a union that acts and continues to act as an exclusive hiring hall for its users looking for stagehand work in the Las Vegas metropolitan area.

Because I have concluded that Respondent is a union that acted as an exclusive hiring hall, the duty of fair representation attaches to Respondent regarding the operation of its hiring hall. As such, Respondent must provide its users with sufficient information, if requested, so they can determine whether they are being treated fairly. On this point, Respondent argues that it was justified in denying Lucas' information request because he "is not a member of" the union. Yet, Respondent cites absolutely no authority for this proposition. In fact, it cannot rely on Board precedent because the Board has held that a union that acts as a hiring hall owes a duty of fair representation to *all users of the hall* regardless of union membership.⁵² What's more, Respondent, by virtue of being the opposing party in multiple charges filed by Lucas, was and remains fully aware that Lucas has challenged being denied access to job referral information *when he was not a member of Local 720*.⁵³

Equally unavailing is Respondent's argument that it was justified in denying Lucas' information request because the request "was not directed toward ascertaining whether or not he had been treated fairly."⁵⁴ Respondent's argument, made for the first time during the hearing and in its post-hearing brief, is premised on the fact that Lucas' request for approximately one years' worth of dispatch records was overbroad and unreasonable given the "one" botched

⁴⁷ *Carpenters Local 102*, supra at 1102, citing *Teamsters Local 460 (Superior Asphalt)*, 300 NLRB 441 (1990).

⁴⁸ See *Stage Employees IATSE Local 7*, 339 NLRB 214, 216-217 (2003) (exclusive referral service exists where parties' contract states that employer "will give the Union first opportunity to furnish, and the Union agrees to furnish, applicants for employment with the requisite skills").

⁴⁹ GC Exh. 7.

⁵⁰ Tr. 90-92.

⁵¹ See *Stage Employees IATSE Local 720 (AVW Audio Visual)*, 332 NLRB 1 fn. 5 (2000), rev'd. on other grounds by *Lucas v. NLRB*, 333 F.3d 927 (9th Cir. 2003); see also *Stage Employees IATSE Local 720 (AVW Audio Visuals, Inc.)*, 341 NLRB 1267 (2004); and *Stage Employees IATSE Local 720 (AVW Audio Visuals, Inc.)*, 352 NLRB 29 (2008); and *Stage Employees IATSE Local 720 (Production Support Services)*, 352 NLRB 1081(2008).

⁵² See *Carpenters Local 608*, supra; see also *Breining v. Sheet Metal Workers Local 6*, 493 U.S. 67, 89 (1989).

⁵³ See, e.g., *Stage Employees IATSE Local 720 (Production Support Services)*, 352 NLRB 1081 (2008).

⁵⁴ R. Br. at 15.

referral in February 2013 that cost him the Caesars Palace call back. Respondent relies on the Board’s decision in *Millwrights* to limit a request for dispatch records to 6 months. However, the Board never set such a definitive limit.⁵⁵ In *Millwrights*, the charging party filed a charge against respondent union, an exclusive hiring hall, for denying his request for approximately one year’s worth of dispatch records. The charging party requested these records because he believed the union breached a prior settlement agreement between he and respondent that was signed approximately a year prior to the records request. Yet the Board, in adopting the judge’s decision, found that the parties previously agreed between themselves that the charging party was entitled to six months worth of dispatch records and noted no precedent limiting the look back period to six months. In fact, it was unclear whether “it was legally appropriate to equate an employee’s look back rights with Section 10(b)’s 6-month rule.”⁵⁶

However, even assuming that Lucas is limited to requesting six months worth of dispatch records, Respondent failed to provide even those records. In fact, it never responded in any way to Lucas’ request and offered no explanation or justification to Lucas for its refusal to comply with his request. As the judge held in *Millwrights*, I find that Respondent violated Section 8(b)(2) and (1)(A) by refusing to provide *any* of the requested records.

Finally, Respondent avers that its decision to deny Lucas’ records request was not arbitrary because it had a duty to protect the privacy and safety of its members and Lucas had no compelling reason for requesting the records. However, this defense is also unpersuasive for several reasons. First, Respondent has not shown that the dispatch records contained such “confidential” information for which it had to protect. In fact, Lucas was only requesting referant’s dispatches, i.e., what jobs registered users were referred, when and by whom. Even if Lucas would have been privy to confidential information such as a referant’s name, address, or social security number, Respondent could have (and should have) redacted that information from the records. Instead, it simply refused to turn over the requested documents.

Second, although Respondent raises a myriad of First Amendment defenses, these constitutional protections do not attach to the release of dispatch records (versus the release of a union’s membership list) which the Board clearly determined do not infringe upon one’s First Amendment rights.⁵⁷ Third, even if First Amendment protections were at issue here, not only has Respondent failed to show that the referants on its list had any reasonable expectation of privacy regarding the disclosure of their names, addresses, telephone, or social security numbers (assuming that this information was contained on Respondent’s dispatch records), Respondent never raised any of these concerns with Lucas at the time of his request (or at any time prior to submitting its post-hearing brief); for if Respondent had, Lucas and Respondent could have dealt with those concerns accordingly. Again, Respondent ignored Lucas’ June 2013 information request.

I also find Lucas had a compelling reason (assuming he needed one) for requesting Respondent’s dispatch records. Contrary to Respondent’s assertion that Lucas’ “one botched”

⁵⁵ *Millwrights*, supra at 1099 fn. 2. The Board passed on the question of whether a registered user of a hiring hall is limited to requesting only 6 months of dispatching records.

⁵⁶ *Id.*

⁵⁷ See, e.g., *Millwright*, supra, *Carpenters Local 608*, supra.

referral did not warrant his request for over a year’s worth of dispatch records, the record reveals that Lucas became concerned about Respondent’s operation back in 2012. Lucas challenged Respondent’s denial of his information requests in separate litigation. Then, in 2013, Lucas experienced three “botched” referrals that occurred between February and March 2013. Once this occurred, Lucas requested job referral information from Respondent but Respondent’s disclosures were not responsive to his request. Thus, it was the series of events over a span of two years that raised Lucas’ concern about Respondent’s operation. That fact alone, I conclude, was sufficient for Lucas’ June 2013 request for records from Respondent.⁵⁸

Respondent further argues that Lucas’ June 2013 request was made in bad faith. Here, Respondent points to Lucas’ persistent evasiveness with Respondent about his availability which contributed to the confusion with the Caesars Palace call back. However, Lucas’ *behavior* did not make his June 2013 request any less compelling.⁵⁹ Rather, I must consider Lucas’ *reason* for requesting the dispatch records to determine if the request was “reasonably directed toward determining whether [Lucas] was treated fairly.”⁶⁰ Respondent, relying on the litigiousness and animosity between it and Lucas, infers that Lucas’ reasons for his June 2013 request was made to further harass Respondent. However, I could posit that that same animosity is what motivated Respondent to ignore Lucas’ request. Be that as it may, while it is clear from the record that there is no love lost between Lucas and Respondent, I find no evidence that Lucas’ request for Respondent’s dispatch records was made in bad faith. Rather, I credit Lucas’ testimony that he grew suspicious overall of Respondent’s operation when he kept experiencing “botched” referrals, requested referral information from Respondent (March 2013) to get to the bottom of it but was only provided with *his* referrals. Lucas grew even more concerned that Respondent was withholding information and requested more specific information on all user’s job referrals (June 2013), but after doing so, received no response from Respondent. Although I cannot award Lucas backpay since I find that his evasiveness regarding his availability contributed to the February 2013 “botched” referral and I have no evidence in the record as to his lost wages for any of the other “botched” referrals, Lucas’ *reasons* behind his March and June 2013 information requests were nevertheless made in good faith. Simply put, Respondent’s arguments fail to protect it from liability.

Accordingly, I find Respondent violated Section 8(b)(2) and (1)(A) of the Act when it breached its duty of fair representation owed to Lucas by arbitrarily refusing to comply with his June 2013 information request.

⁵⁸ GC Exh. 22.

⁵⁹ At the hearing, Respondent also attempted to show that Lucas’ information request was made in bad faith by painting Lucas as a paranoid, violent, racist, and sexist individual who takes no responsibility for his own actions. These allegations are more thoroughly delineated in the CGC’s brief. However, all of these assertions are irrelevant in determining whether Respondent violated the Act by failing/refusing to provide Lucas with the information he requested. Moreover, to the extent Respondent proffered documents or testimony to support its theory, they are stricken and given no weight due to the previously imposed sanction against it.

⁶⁰ See fn. 44, *supra*.

C. The Richardson Allegations

1. Facts

5 Charging Party Richardson is a registered user of Respondent’s referral service. He has used the service for 10 years.⁶¹ In late 2012, at Respondent’s offices, Richardson was involved in a verbal confrontation with coworker, Antoine (Jersey) Gilliam.⁶² During the confrontation, Richardson threatened Gilliam with physical harm. After the altercation, Richardson met with Business Representative Hanson for assistance in dealing with Gilliam. However, Richardson
10 felt that Hanson failed to act on his concerns, and he became frustrated, loud, and verbally abusive with Hanson.

On December 27, 2012, Hanson sent Richardson a letter advising that:

15 In accordance with Article VIII of Work Rules and Procedures for Referents, which we have included for your reference, you are in violation of Article VIII, Section 1B(iv): Verbal assault against or threatening harm to any referent, Union employee, Job Steward, Union official or Employer representative while at work, or in connection with work. This includes threatening or abusive language to the
20 employees at the Union office.⁶³

The letter added that Richardson was being fined \$1000 for his conduct toward Gilliam and Hanson. Additionally, Richardson would be suspended from the referral service if he failed to pay the fine. Richardson was advised that the fine and suspension would be held in abeyance if
25 he appealed the fine.⁶⁴

Under Respondent’s work rules, disciplinary infractions are divided into three categories: major, moderate, and minor offenses. Major offenses include, but are not limited to: conviction of felony related to work, physical assaults, or theft at work. Moderate offenses include but are not limited to: harassment, verbal assault, conduct or behavior damaging to union’s contractual
30 relations, or consumption of alcohol or controlled substances at work. Minor offenses include but are not limited to: failure to appear before the rules committee, chronic tardiness (defined as three (3) times in twelve (12) consecutive months), job jumping, failure to notify the Union before performing nonunion work that falls within the traditional scope of the Union's
35 jurisdiction, or failure to maintain current valid address with Local 720.⁶⁵

Each category of offenses results in a fine but the amount of the fine depends on the type and number of offenses. Specially, article VIII, section 2 provides:

⁶¹ Tr. 273.

⁶² Tr. 406-407.

⁶³ GC Exh. 23

⁶⁴ Id.

⁶⁵ GC Exh. 13

Major Offenses:

- i) First offense in a twenty-four (24) month period \$2,000 fine
- ii) Second offense in a twenty-four (24) month period \$5,000 fine
- iii) Third offense in a twenty-four (24) month period \$10,000 fine

Moderate Offenses:

- i) First offense in a twenty-four (24) month period \$1,000 fine
- ii) Second offense in a twenty-four (24) month period \$2,000 fine
- iii) Third offense in a twenty-four (24) month period \$5,000 fine

Minor Offenses:

- i) First offense in a twelve month period \$100 fine
- ii) Second offense in a twelve month period \$200 fine
- iii) Third offense in a twelve month period \$300 fine
- iv) Four minor offenses within a twelve-month period equal a moderate offense⁶⁶

Section 3 of article VIII provides:

. . . . Failure to pay a minor offense fine within fourteen (14) days from the time the fine is imposed shall result in removal from the Local 720 referral system until such fine is paid. Failure to pay a moderate or major fine within thirty five (35) days, from the time the fine is imposed shall result in removal from the Local 720 referral system until such fine is paid.⁶⁷

Additionally, article VII, section 2 provides:

. . . . Failure to pay the fine in the allowed period of time as per Article VIII, Section 3, will result in automatic suspension from the Local 720 referral system until such fine is paid. In case of appeal, no penalty shall be imposed until the appeal procedure has been completed.⁶⁸

It is undisputed that Richardson successfully appealed his fine and suspension. However, he was warned that if he was involved in a similar infraction within a 24-month period, he would be suspended from the referral service and fined \$2000.⁶⁹ Unfortunately, Richardson did not heed the warning.

In or around March 28, 2013, Richardson was involved in another confrontation with Gilliam. This time, however, the altercation led to Richardson physically assaulting Gilliam outside of Respondent's offices. On April 3, 2013, Hanson sent Richardson a letter advising him

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*, see also GC Exh. 13.

⁶⁹ GC Exh. 24.

that he had again violated Respondent's work rules, was being fined \$2000 for his conduct and that he would be suspended until he paid the fine.⁷⁰ Richardson again appealed the fine and suspension.⁷¹

On July 11, 2013, Respondent denied the appeal, fined Richardson \$4000 and informed him that if he failed to pay the fine, he would be suspended from the referral list.⁷² It is undisputed that Richardson did not pay the fine, and he was suspended from the referral list effective June 25, 2013.⁷³ Thereafter, he filed the instant unfair labor practice charge.

At the hearing, Richardson testified that, in late November 2013, he called President Cook to discuss his fine and suspension.⁷⁴ According to Richardson, he asked Cook if Cook would allow him return to work and work off the \$4000 fine by deducting set amounts from his paycheck. Cook declined this suggestion and told Richardson he needed to pay the fine in full before he could return to the referral list. Yet, seemingly in the next breath, Cook also mentioned that he might consider allowing Richardson to pay off the fine in installments but it is undisputed that Richardson did not work off the fine.⁷⁵ In any event, Richardson remained off work following this conversation. Because Respondent declined to cross-examine or recall Richardson, Richardson's testimony stands uncontroverted.⁷⁶

Richardson testified that, after Region 28 issued its Consolidated and Amended Consolidated Complaint in late November 2013, Cook called him into Respondent's offices. According to Richardson, Cook told him that he would rescind the \$4000 fine and return him to work if he agreed to withdraw his ULP charge against Respondent. Richardson verbally agreed, and in or around January 2, 2014, Respondent began referring Richardson out for work. However, Richardson felt that Respondent continued to harass him and only allowed him to return to work because he agreed to withdraw his ULP charge. Richardson did not withdraw his ULP charge.

It is undisputed that Richardson was suspended from Respondent's referral service from June 25, 2013, to January 2, 2014. Respondent again declined to cross-examine or recall Richardson, so his testimony stands uncontroverted.

2. Analysis

The CGC alleges that Respondent violated the Act when it suspended Richardson from its referral list and prevented him from working until he paid a \$4000 fine for violating Respondent's work rules. Respondent counters, arguing that it was justified in suspending

⁷⁰ GC Exh. 25.

⁷¹ Tr. 276-278.

⁷² Tr. 278-279, see also GC Exh. 27.

⁷³ Tr. 279-280.

⁷⁴ Tr. 280-281.

⁷⁵ Tr. 281.

⁷⁶ Respondent offered Hanson's testimony concerning Richardson's threats and the actions taken against Richardson in response to him violating Respondent's work rules. Respondent also offered various documents to support Hanson's testimony. However, I struck Hanson's testimony and will give no weight to any of Respondent's documented evidence due to the previously imposed sanction.

Richardson from its referral service in order to protect the safety of its employees and staff from Richardson’s threatening and violent behavior.

In his brief, the CGC argues that, based upon Board precedent, I should determine that
 5 *any* union hiring hall rule that suspends users from its referral service to enforce a fine is patently
 unlawful.⁷⁷ I decline to so find. Rather, the Board has consistently held that a union rule
 suspending a user from its referral service for failing to pay a fine/assessment is *presumptively*
 unlawful unless the union can show that the rule was necessary to the effective performance of
 10 its representative functions.⁷⁸ Although the Board has found that a union cannot necessarily tie
 an employment-related sanction (i.e., not referring an employee) to the collection of a fine,⁷⁹ the
 Board nevertheless evaluates the *reasons* behind the union imposing the fine.⁸⁰

In this case, I find that both Respondent’s rule and how it was applied to Richardson,
 violates the Act. Initially, Respondent argues, for the first time at hearing, that it never intended
 15 to collect the \$4000 fine from Richardson. Rather, Respondent avers that it only imposed the fine
 so Richardson would “chill out” from his threatening behavior. However, the plain reading of
 Respondent’s disciplinary letter clearly indicates that it intended to suspend Richardson from its
 referral service until he paid the \$4000 fine. In fact, I credit Richardson’s unrebutted testimony
 that, when he tried to make arrangements with Respondent to pay the fine in installments and
 20 return to work, Cook declined to return him to work until the fine was paid in full. To that end, I
 find this case identical to the Board’s decision in *Fisher Theatre*, where the Board adopted the
 judge’s finding that Respondent violated the Act when it unlawfully suspended two employees
 from its referral services who violated union work rules and refused to return them to work until
 their fines were paid in full.⁸¹

Respondent next argues that it rebutted the presumption that its actions regarding
 Richardson were unlawful because Richardson’s suspension was necessary to protect the safety
 of its staff and others from his continuing threatening behavior.⁸² However, the Board has
 previously found this very argument unpersuasive in rebutting that presumption.⁸³ Thus, while
 30 Respondent is certainly free to impose fines/assessments when users violate its internal work
 rules, it simply cannot enforce the fine by excluding users from its service.

⁷⁷ GC Br. at 36-40.

⁷⁸ *Fisher Theatre*, 240 NLRB 678, 691 (1979) (a union rule that prohibits referrals for nonpayment of fine is *ordinarily*
 unlawful regardless of why the fine was imposed) (emphasis added).

⁷⁹ See, e.g., *Longshoremen ILWU Local 13 (Pacific Maritime Assn)*, 228 NLRB 1383, 1385 (1977).

⁸⁰ See *Employees IATSE Local 720 (Production Support Services)*, 352 NLRB 1081, 1086 (2008) (the ALJ determined that
 40 “. . . nonpayment of a fine, per se, has nothing to do with the union’s representative function. It is the *reason* for imposing the
 fine that must be scrutinized. As the cases above have demonstrated, there may be legitimate and lawful reasons for imposing
 fines that result in removal from a referral system. These cases must be scrutinized on a case-by-case basis.”) (emphasis added).

⁸¹ *Fisher Theatre*, supra at fn. 77.

⁸² Respondent again introduced testimonial and documentary evidence through John Hanson concerning how Richardson’s
 outbursts and continued threatening behavior was so pervasive it caused employers to issue “no hire” letters for Richardson.
 However, as previously stated, I give this testimonial and documentary evidence no weight due to the sanction against
 45 Respondent.

⁸³ *Longshoremen ILWU Local 13 (Pacific Maritime Assn)*, 228 NLRB at 1385, enfd. 581 F.2d 1321 (9th Cir. 1978), cert.
 denied 440 U.S. 935 (1979).

Respondent also claims its actions in fining/suspending Richardson were not unfair, arbitrary or unlawfully motivated. However, the fact that Respondent initially asserted that it never intended to enforce the fine against Richardson reinforces the fact that its actions were arbitrary. Moreover, I find the evidence supports that Respondent had an unlawful motive as I credit Richardson’s un rebutted testimony that Respondent only tolled the fine and returned Richardson to work when he verbally agreed to withdraw the instant charge.

Lastly, Respondent raised several affirmative defenses in its answer (i.e., the complaint was untimely, unconstitutional, inequitable, and a waste of Board resources) but failed to elaborate or present any evidence to support these defenses. Thus, Respondent’s defenses are hereby waived. Furthermore, to the extent Respondent argues the equitable defenses of estoppels, unclean hands, laches and waiver, the Board has declined to recognize these defenses in its proceedings.⁸⁴ Accordingly, all of Respondent’s arguments and defenses fail to rebut the presumption that its rule and how it was applied to Richardson were unlawful.

Therefore, I find Respondent violated Section 8(b)(2) and (1)(A) of the Act when it breached its duty of fair representation owed to Richardson by suspending him from its referral service and preventing him from returning to work until he paid all fines levied against him.

CONCLUSIONS OF LAW

1. Respondent IATSE Local 720 is a labor organization within the meaning of Section 2(13) of the Act.

2. Respondent violated Section 8(b)(2) and (1)(A) of the Act when it breached its duty of fair representation it owed Charging Party Steven Lucas by failing/refusing Lucas’ June 2013 request for access to job referral records.

3. Respondent violated Section 8(b)(2) and (1)(A) of the Act when it breached its duty of fair representation it owed to Charging Party Jamy Richardson by suspending him from Respondent’s referral service and preventing Richardson from returning to work until he paid all fines levied against him.

4. By engaging in the conduct described above, Respondent has engaged in unfair labor practices affecting commerce.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the

⁸⁴ See *Goodyear Tire & Rubber Co.*, 271 NLRB 343, 346 (1984); *Woodworkers (Kimtruss Corp.)*, 304 NLRB 1 (1991); *NLRB v. J.H. RutterRex Mfg Co.*, 396 U.S. 258 (1969); *Gulf States Mfg, Inc.*, 598 F.2d 896 (5th Cir. 1979).

following recommended⁸⁵

ORDER

5 The Respondent, IATSE Local 720 of Las Vegas, Nevada, its officers, agents, and representatives, shall

1. Cease and desist from

10 (a) Arbitrarily refusing to allow Steven Lucas access to referral/dispatch records or other job referral information that would assist Lucas to determine his relative referral position or ascertain whether he is being or has been treated fairly regarding job referrals.

15 (b) Enforcing a fine levied against Jamy Richardson for violating Respondent’s Work Rules by suspending him from Respondent’s referral service.

20 (c) Maintaining a rule, policy and/or practice of enforcing a fine levied against a member user/referant for violating Respondent’s work rules by excluding a member-user/referant from its referral service until full payment of the fine is received.

25 (d) Threatening, encouraging, coercing or offering a “quid pro quo” to any member-user/referant to withdraw or not to pursue a charge or complaint against Respondent with the National Labor Relations Board in exchange for nonpayment of a fine levied against them.

 (e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

35 (a) Allow Lucas to look at, take notes on, and/or photocopy (at his expense), all job referral/dispatch records in Respondent’s possession, of all referants and all jobs, to all signatory employers to a collective-bargaining agreement with Respondent for the period from May 2012 to June 4, 2013, to help Lucas determine his relative referral position or ascertain whether he is being or has been treated fairly regarding job referrals by Respondent.

40 (b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records matching the foregoing descriptions in paragraph (a).

 (c) Within 14 days after service by the Region, post at its offices or hiring halls, wherever they may be maintained copies of the attached notice marked “Appendix 1”⁸⁶ in both

45 ⁸⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its members and employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Rescind or revise Respondent's work rules to make clear to employees, members and/or referants that Respondent will no longer enforce a fine levied against a referant/registered user for violating Respondent's work rules by suspending or otherwise causing a referant to be excluded from its referral service until full payment of the fine has been received.

(e) Notify all employees, member users and/or referants of the rescinded or revised rule to include providing them a copy of the revised policy/rule or specific notification that the policy/rule/practice has been rescinded.

(f) Calculate and reimburse Jamy Richardson for all wages lost resulting from his suspension from Respondent's referral service during the period from June 25, 2013, to January 2, 2014.

(g) Calculate and make Richardson whole for any loss of any other monetary benefits, retirement contributions and/or any other benefits suffered as a result of the unlawful suspension.

(h) Remove or expunge from its files and records all references to Richardson's suspension from Respondent's referral service for failing to pay fines levied against him, and within 3 days thereafter, notify Richardson in writing that Respondent has done so and that it will not use the unlawful suspension against Richardson in any way.

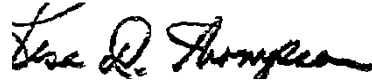
(i) Within 14 days after service by the Region, post at its offices or hiring halls, wherever they may be maintained copies of the attached notice marked "Appendix 2"⁸⁶ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its members and employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced or covered by any other material.

⁸⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁸⁷ Id.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification by a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply with this Order.

Dated, Washington, D.C. May 7, 2014



Lisa D. Thompson
Administrative Law Judge

APPENDIX 1

NOTICE TO MEMBERS AND EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain on your behalf with your employer.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT arbitrarily refuse to respond to or arbitrarily deny your request for access to referral/dispatch records or other job referral information to help you ascertain whether you are being or have been treated fairly regarding job referrals.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL maintain our duty of fair representation as guaranteed you by the National Labor Relations Board.

WE WILL allow Charging Party Steven Lucas to look at, take notes about, and/or photocopy (at his expense), all job referral/dispatch records in our possession, of all referants and all jobs, to all signatory employers to our collective bargaining agreement for the period from May 2012 to June 4, 2013, to help Lucas determine whether he is being or has been treated fairly regarding job referrals.

WE WILL preserve, and, upon request, make available to the Board or its agents for examination and copying, all records matching the foregoing descriptions.

IATSE LOCAL 720

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099

(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CB-107693 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (602) 640-2146.

APPENDIX 2

NOTICE TO MEMBERS AND EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain on your behalf with your employer.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT maintain a policy, rule or practice of enforcing a fine levied against you for violating our internal Work Rules by suspending or otherwise excluding you from our referral service.

WE WILL NOT threaten, coerce, encourage or offer you a “quid pro quo” where we state, offer, refer or in any way suggest that you not pursue or file or that you withdraw a charge(s) or complaint(s) against us with the National Labor Relations Board in exchange for rescinding a fine levied against you.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL maintain our duty of fair representation as guaranteed you by the National Labor Relations Board

WE WILL rescind or revise our internal Work Rules to make clear to you that we will no longer enforce a fine levied against you for violating our internal work rules by suspending or otherwise excluding you from our referral service until full payment of the fine is received.

WE WILL notify all employees, member-users and/or referrants of the rescinded or revised rule, policy and/or practice to include providing you with a copy of the revised policy/rule or specific notification that the policy/rule/practice has been rescinded

WE WILL reimburse Charging Party Jamy Richardson for wages lost resulting from his suspension from our referral service during the period from June 25, 2013 to January 2, 2014.

WE WILL remove or expunge all records of and references to Charging Party Richardson’s suspension from our referral service for failing to pay fines levied against him.

IATSE LOCAL 720

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099

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The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CB-107693 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.